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Socio-Legal Study on Freedom of Media in Indian Democracy with special reference to Social Media: An Analytical Perspective

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ABSTRACT

In the era of fast globalization, the rapidly changing field of information, communication and technology, which is the dominant theme in the intellectual and political discussion and of last several decades, is one of the most outstanding developments of the past century. It has rapidly altered the political economic scenario. The modern communication system nowadays like new technologies and cultural resources ranging from books, journals, films, televisions, internet and other social media like Whatsapp, Facebook, Youtube, Google, Twitter etc. Where originally developed not merely as a vehicle of mass communication but also in relation to specific national market and processes of capitalist accumulation and centralization.

The Press is appropriately regarded as the fourth pillar of the state since it impacts every area of human existence and fulfills five essential responsibilities like to survive, to give information, to offer advice and interpretation of news, to entertain and to serve the public. But the media can play an effective role only when it is free to express its views and to articulate its opinions. As air is to life so also freedom to the media, without freedom no media can exist to play a significant role in all democratic countries of the world. The right to freedom of the press is seen as the corner stone of all other rights and an absolute requirement for their survival. Every other freedom that free men cherish is guaranteed by a free press, which is awake at all times.

I. INTRODUCTION

Freedom of Media in India is one of the most important aspects for nourishment of fundamental rights which are enshrined under the constitution of India. The exponential growth in the media, industry and particularly in the electronic and satellite communication, witnessed during the recent years in India has changed the media scenario in the country as never before. Freedom of social media is given paramount consideration in democratic India. Freedom of media is a very important fundamental right in a democratic society. In an open society people have to form their own opinions and take their own decisions. Media performs a very

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important function to providing information and thought to the people, the media therefore is rightly referred as the fourth estate of the state.

The Media is a critical societal institution. In a democracy it is critical for developing, expressing and molding public opinions. It has made a substantial contribution to socio-economic and political progress. But the media can play an effective role only, when if media is free to express its views and articulate its opinion. Without freedom no media can exist to play a significant role in all democratic countries of the world, the right to freedom of the press is seen as the cornerstone of all other rights and an absolute requirement for their survival. As a result, the notion of media freedom encompasses a wide variety of freedoms, incorporates the democratic value of responsibility and serves as a democratic control mechanism.

Article 19(1) (a) of the constitution all citizens have the right to freedom of speech and expression. “Under the Universal Declaration of Human Rights of 1948, as well as the International Covenant on civil and political rights, the right is recognized globally as a human right.² Unlike the American Constitution, article 19(1) (a) does not expressly or independently guarantee press freedom. Dr. B R Ambedkar justified the omission by observing³, “The Press has no special rights which are not to be given or which are not to be expressed by the citizen in his individual capacity. The editors for a press or the manager are merely exercising the right of expression, no special mention is necessary of the freedom of the press”.

In a democratic democracy, freedom of speech and expression is considered fundamental and unalienable.⁴ The most important and precious right of a citizen is the valued privilege. It was formerly thought to be a necessary component of democratic functioning.⁵ It serves as the bedrock of democratic society.⁶ It is necessary for the rule of law and citizen liberty.⁷ In **Romesh Thapar v/s State of Madras**,⁸ Justice Patanjali Sastri former C.J. of Supreme Court had observed freedom of speech and of the press lay at the foundation of all democratic organizations, without free political discussion no public education, so essential for the proper functioning of the process of popular government is possible

In democratic governance system, media works as a bridge between public and government.

² See Article 19 ICC PR. The Right is identical with 1st Amendment of the US Constitution 1791

³ CAD VII 980 see also Brij Bhushan v/s State of Delhi AIR 1950 SC 129

⁴ Govt. of A.P. v/s P.L. Devi AIR 2008 SC 1640

⁵ Union of India v/s Naveen Jindal AIR 2004 SC 1959 (National Flag Case)

⁶ Union of India v/s Motion Picture Association AIR (1999) 2234 SC

⁷ In Re. DC Saxena AIR 1996 SC 2481

⁸ AIR 1950 SC 124

Media is bringing dynamic changes in society through its communication. The contribution of the media cannot be forgotten in the field of people's living standard. Media make community aware through its information and communications in this regard media acts like a '**watch full dog**' in society. Media has a rich in all parts of society, whether it is print media, newspaper, magazines or broad-casting media, radio, doordarshan, computer or social media i.e., Facebook, Whatsapp, Twitter, E-mail, YouTube and many other apps are directly connected with society. It has become an integral part of community. Media is the sword arm of democracy, it protects public interest against malpractice and creates public awareness.

II. FREEDOM OF MEDIA INCLUDING SOCIAL MEDIA AND ITS SIGNIFICANCE IN OUR SOCIETY

The democratic government system benefits from media freedom. The media is a critical societal institution. In the present economic liberalization era, the freedom of media is absolutely necessary to make advertising is a commercial speech under constitutional provisions of right to freedom of speech and expression, freedom of advertisement is indispensable to make the effective, active and popular the products of commodity, the money earned from advertising promotions strengthens industrial prosperity. Hence, media freedom is indispensable for raising the voice of democracy. But as a result of unlimited freedom of media, the present scenario of media is getting crepuscular day by day, therefore, it is need of the hour to prevent the misuse of legal system, adherence to ethical standards and making the media aware about its duties.

In today society, the use of social media has been a necessary daily activity. Social media is typically used for social interaction and access to news and information and decision making. It is a valuable communication tool with others locally and worldwide, as well as to share, create and spread information. The recent development in wireless technology have introduced new means and directions of communication, millions of people all over the world are now engaged in political, economic, cultural and educational discourses due to the vast expansion of the world wide web. Indeed, Social media has transformed people's lifestyles and has introduced a new pattern of social interaction.

The Whatsapp has become the world's most popular messaging application of 2015-2016⁹, and has over 2.9 billion users worldwide as of February 2022. It has become the primary means of electronic communication in multiple countries and locations including Latin America, the Indian Sub-Continent and large parts of Europe and Africa. According to an

⁹ Leo Sun (September 11, 2015) Facebook Inc's, Whatsapp Hits 90 million users

estimate, more than 67% of internet users are engaged on Facebook and YouTube. As of the first quarter of 2019, twitter averaged 332 million monthly active users, while Instagram has become the fourth most downloaded mobile app of the world. Youtube is the second most visited website after google search, according to Alex internet ranking. YouTube allows users to upload view rate, share and playlists report, comment on videos and subscribe to other users.

Nowadays more than 86% of all business have dedicated to social media platforms as part of their marketing strategy. Almost 60% of marketers are devoting the equivalent of a full work day to social media marketing for development and maintenance. Social media has quickly entered the educational field, it has also introduced online learning, which is becoming more popular among students all over the world. Overall social media can be considered as a foundational shift in daily activities and lifestyles. It is also a step towards a new communication environment.

III. MEDIA TRIALS AND TV CHANNELS ESPECIALLY IN SOCIAL MEDIA

In the blind race of TRP the media has ignored the real or true fact, and only distorting imaginary facts are being presented before the viewers. “Social media trial is wherein the individuals themselves do a separate investigation of facts and from public opinion against the accused even before the court takes cognizance of the case, it creates prejudices in the public and sometimes even judges”. Trial primarily denotes the function of judiciary, by which they dispose out the fact in issue of parties of the suit. But nowadays, this work is being done by broad casting media, print media as well as social media.

Social Media trial is a phrase described by various social media appliances. Such as Facebook, Twitter, YouTube, Instagram, Whatsapp etc. coverage on a case through and attempt by such media to hold the accused guilty even before the trials began in competent court. The Social Media usually portrays the accused a villain, not based on facts but only to sensationalize the news, which causes damage to the dignity of the accused. Media through their trial attempts to reincarnate itself into the public court and interfere with court proceedings. It fails to analyze the vital gap between accused and a convict keeping at stake the golden principles of ‘presumption of innocence until proven guilty’ and guilt beyond reasonable doubt. Article 21 of the Indian Constitution under the right to life and personal liberty, everyone has the right to privacy. Article 21 of the Constitution guarantees the ‘Right to Privacy’ or the right to be left alone. A citizen has the right to protect his or her individual privacy, as well as the privacy of his or her family, marriage, procreation, homeland,

childbearing and education. Without his permission, no one can write anything on the above topics, whether true or false, laudatory or critical. If he does so, he will be infringing on the rights of the person concerned and will be held responsible in a damages action. Telephone taping is a serious violation of an individual rights to privacy, which is guaranteed in Article 21 of the constitution as part of the right to life and personal liberty and the government should not employ it unless there is a public emergency or the public's safety requires it.¹⁰

Families and relatives of people accused of crimes have recently used the influence of social media to reopen proceedings. In the cases of the murder of Jassica Lal, Nitish Katara, Priya Darshan Mattoo and BMW media influence was observed in fall swing in 2015, A Delhi women Jasleen Kaur posted a photo of a man, Sarvjeet Singh on Facebook and accused him of Sexual harassment. The Facebook post went viral which was followed by a media trial labeling the man a 'pervert', Delhi kadarinda (The Delhi's Predator). Four years later, the man was found out to be innocent by the Delhi Court and was acquitted of all the charges. The widespread use of social media influences the legal process. More importantly the regular usage of platforms such as Facebook and Twitter represent threats to the fair trial ideal. The right to freedom of media factually not complementary to the right to privacy. The series of cases so far as decided by the supreme court exhibits that in certain circumstances in case of public interest the right to privacy may be subject to the exposure of public at large. Hence, it cannot be illustrated that the right to privacy cannot exist without freedom of media therefore, the separate Article has been created under which the freedom of media has been maintained whereas right to privacy is a subject to article 21 of the constitution constructively, Article 19 cannot complete Article 21 of the constitution because it is itself a complete article covering the distinct type of liberty which is not covered under Article 19 of the constitution.

Article 19(1) (a) of the Constitution guarantees to all citizens the right to freedom and speech and expression. Clause (2) of this article, at the same time provides some restrictions on these rights. The freedom of speech and expression is not an absolute right and restriction can be imposed under sovereignty and integrity of India, the security of state, friendly relationships with foreign states, public order, decency, morality or relation to contempt of court, defamation. It may stated that the exercise of right conferred by article 19(1) (a) carries special duties and responsibilities.¹¹ Section 2 of the contempt of court act 1971 interference in the administration of justice specifically referred to as contempt in the definition of criminal contempt. Social media reporting is inadmissible evidence and putting it into the

¹⁰ People's Union for civil liberties v/s Union of Indian (Phone tapping code)

¹¹ Constitutional Law of India, Article 19(2)

public domain the media draws the judge's attention to details that are not to be addressed in adjudicating the case and could subconsciously influence the judge's judgment under our legal system, a suspect/accused has the right to a fair trial and is presumed to be innocent until proven guilty in a court of law.

IV. IMPACT OF MEDIA TRIAL ON JUDICIAL PROCEEDINGS

The Social media has become the integral part of human being at present. In today's society, the use of social media has become a necessary daily activity. Social media is typically used for social interaction and access to news and information and decision making. It is valuable communication tool with others locally and worldwide, as well as to share, create and spread information. Social media is a big platform not only for promotion or marketing but one can also reach out millions of people and share their views, through social media, every person is aware of what is happening around them. But like any other theory social media platforms have certain disadvantages. On social sites you can get easy to read false and baseless news, some people create religious hysteria and hatred, through their thoughts and expressions, on social sites. Prank videography, online cheating, fraud, cyber-bullying, cyber-stalking, misleading advertisements, regarding treatment of incurable diseases or magic remedies, defamation, libel and slander are best examples which happens through social media. These cyber crimes or social media wrongs are the civil as well as criminal proceedings against the accused.

It is healthy to have a functioning social media for citizens to be able to express opinions freely under the freedom of speech and expression clause. But in the age of prevalence existence of social media, the fact is that many of the news in social media may be paid, fabricated and false. Furthermore, these fictions evidence cause defamation to persons who have been acquitted by the court's based on a judicial proceeding and on the grounds of lack of proof beyond reasonable doubt. Because of social media defamation, the accused victims in these cases face difficulty in resurrecting their reputation in society, ultimately jeopardizing their rights to dignified life, causing severe psychological and physical harm. Due to absence of cross-examination and sufficient evidence, social media sometimes acts to favors for a particular person rather than entire incident of the matter. Social media mostly takes the decision without properly knowing the fact or truth of incident. Due to the thirst and hunger of name and fame, social media often reach the conclusion hastily, which creates difficulties for the judicial proceedings as well law and society 'Trial' refers to the function of judiciary, it denotes the proceedings which is convened before the court and any decision would be taken

the court on the ground of sufficient evidence. This is an adjudicating process which only exercised by judiciary.

It may be possible in media trials, to benefit one person at the cost of another, which is against the principle of natural justice. Few years back the law commission report even suggested a law to tackle trial by media. Trial which unprecedentedly goes over social media can be a contempt of court and even defamation in certain cases. The commission suggested the prohibition elements that can provide to be prejudicial towards the accused.

V. CONCLUSION

Due to prevalence of social media, online fraud and cyber crimes are increasing day by day in society. Some media houses openly are taking support and favor of governing political parties. Hence, a strong legislation is required by which media can be kept under its jurisdictions. Social media is playing its important role in the society. Social media has positive impact as well as some negative consequence in society. The cry of fake news has become common place and consumer confidence in even traditional media outlets has been significantly eroded in blind race of TRP, the media as well as social media has ignored the ethic and only these distorting imaginary facts are being presented before the viewers.

The social media has become accustomed to taking unilateral decisions without scrutiny of facts and cross-examination, it creates prejudices in the public and sometimes even judges. Sometimes media creates doubt the integrity of the judges who deliver the judgments. The trend of social media trial adversely affects the reputation of a person accused of an offence, by its pre-trial publication. It leads to the gross violation of his right to fair trial, adversely affects the witness and also subconsciously affects the judges and lawyers. Neither a vigilant media can take the place of independent and impartial judiciary, nor can judiciary take the place of free and impartial media. Both are indispensable for the smooth functioning of our democratic tradition and the press should in no way be allowed to jeopardize the functions of the court.

The social media must perform the responsibility of restoring and maintaining the faith of people in the judiciary by restraining itself from unwarranted pre-judicial publication which interferes with the fair trial of the accused and the administration of the justice. Apart from this, circulation of inaccurate, misleading, graceless, baseless or destroyed material on social sites should be a punishable offence comment on caste, religion, community, disclosure on social sites should be generally avoided or should be punished. Social media should not show or write anything that would provoke or incite personal violence or injuring on the right to

privacy. Paramount interest of state, society and rights of an individuals should not be jeopardized violation of right to privacy should be made an offence punishable under the criminal law. Besides this, a strong legislation is required by which a reasonable restrictions could be imposed on social media.
